

CT 16-03
Tax Type: Cigarette Tax
Tax Issue: Possession of Unstamped Cigarettes

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

ABC BUSINESS, INC. d/b/a DEF BUSINESS;
XYZ BUSINESS, INC.; and
JOHN DOE

Respondents

No. XXXX
No. XXXX

RECOMMENDATION FOR DISPOSITION

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe, *pro se*, for ABC Business, Inc. d/b/a DEF Business and XYZ Business, Inc.

Synopsis:

The Department of Revenue (“Department”) seized XXX packs of little cigars from the premises of ABC Business, Inc. d/b/a DEF Business (“respondent”) and XXX packs of little cigars from the premises of XYZ Business, Inc. (“respondent”). Both businesses are owned by John Doe (“respondent”) and are located in Illinois. The packages did not have Illinois tax stamps affixed to them as mandated by the Tobacco Products Tax Act of 1995 (“Tobacco Act”) (35 ILCS 143/10-1 *et seq.*). The Department seeks forfeiture of the little cigars and seeks to impose civil penalties pursuant to the Tobacco Act. Because both businesses have the same owner, the cases were consolidated for purposes of the evidentiary hearing. During the hearing, the respondents asked that the penalties be reduced because the owner was unaware that it was

illegal to sell unstamped little cigars. For the following reasons, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On January 5, 2015, a Special Agent for the Department's Criminal Investigation Division found XXX packs of unstamped little cigars at ABC Business, Inc. d/b/a DEF Business in Illinois. (Dept. Ex. #1, #2; Tr. pp. 8-9)
2. On January 5, 2015, a Special Agent for the Department's Criminal Investigation Division found XXX packs of unstamped little cigars at XYZ Business, Inc. in Illinois. (Dept. Ex. #1, #2; Tr. pp. 16-17)
3. The little cigars did not have Illinois tax stamps affixed to them. (Dept. Ex. #1, #2)
4. The Department's agent seized the packs of little cigars. (Dept. Ex. #1, #2)
5. The taxpayers are not licensed distributors or stamping distributors of little cigars. (Dept. #1, #2)

CONCLUSIONS OF LAW:

Section 10-27 of the Tobacco Act provides, in part, as follows:

Retailers; purchase and possession of little cigars.

(a) Retailers are prohibited from possessing unstamped packages of little cigars containing 20 or 25 little cigars at locations where retailers make sales of little cigars to consumers or users. Retailers that are also stamping distributors are prohibited from possessing unstamped little cigars at locations where those retailers make sales of packages of little cigars containing 20 or 25 little cigars to consumers or users. Retailers that are not stamping distributors shall purchase stamped packages of little cigars containing 20 or 25 little cigars for resale only from stamping distributors, distributors, or wholesalers. Retailers who are not stamping distributors may not purchase or possess unstamped packages of little cigars containing 20 or 25 little cigars. A retailer must be a stamping distributor to make tax exempt sales of packages of little cigars containing 20 or 25 little cigars for use outside of this State. A retailer who is a stamping distributor making sales

of stamped packages of little cigars for use outside of this State may file a claim for credit for such sales with the Department on forms and in the manner provided by the Department. (35 ILCS 143/10-27(a)).

Section 10-45 of the Tobacco Act incorporates by reference various provisions of the Cigarette Tax Act (“CTA”) (35 ILCS 130/1 *et seq.*), including sections 18a, 18b, and 18c. Section 10-45 includes the following: “References in the incorporated Sections to sales of cigarettes mean sales of little cigars in packages of 20 or 25 little cigars.” (35 ILCS 143/10-45)

Section 18a of the CTA states that if it is determined, after a hearing, that the original packages seized were not tax stamped at the time of seizure, then an order must be entered declaring the original packages confiscated and forfeited to the State. 35 ILCS 130/18a. The respondents in the present case did not dispute the fact that the packages did not have Illinois tax stamps. Therefore, it must be ordered that the XXX packs of little cigars from the premises of ABC Business, Inc. d/b/a DEF Business and the XXX packs of little cigars from the premises of XYZ Business, Inc. that were seized be forfeited to the State.

In addition, sections 18b and 18c of the CTA contain civil penalty provisions, which provide as follows:

Sec. 18b. Possession of more than 100 original packages of contraband cigarettes; penalty. With the exception of licensed distributors and transporters, as defined in Section 9c of this Act, possessing unstamped original packages of cigarettes, and licensed distributors possessing original packages of cigarettes that bear a tax stamp of another state or taxing jurisdiction, anyone possessing contraband cigarettes contained in original packages is liable to pay, to the Department for deposit in the Tax Compliance and Administration Fund, a penalty of \$25 for each such package of cigarettes in excess of 100 packages, unless reasonable cause can be established by the person upon whom the penalty is imposed. This penalty is in addition to the taxes imposed by this Act. Reasonable cause shall be determined in each situation in accordance with rules adopted by the Department. The provisions of the Uniform Penalty and Interest Act do not apply to this Section.

Sec. 18c. Possession of not less than 10 and not more than 100 original packages of contraband cigarettes; penalty. With the exception of licensed distributors and

transporters, as defined in Section 9c of this Act, possessing unstamped original packages of cigarettes, and licensed distributors possessing original packages of cigarettes that bear a tax stamp of another state or taxing jurisdiction, anyone possessing not less than 10 and not more than 100 packages of contraband cigarettes contained in original packages is liable to pay to the Department, for deposit into the Tax Compliance and Administration Fund, a penalty of \$10 for each such package of cigarettes, unless reasonable cause can be established by the person upon whom the penalty is imposed. Reasonable cause shall be determined in each situation in accordance with rules adopted by the Department. The provisions of the Uniform Penalty and Interest Act do not apply to this Section.
35 ILCS 130/18b, 18c.

For ABC Business, Inc. d/b/a DEF Business, under section 18c, the penalty for the first XXX packs is \$XXX.¹ Under section 18b, the penalty for the remaining XXX packs is \$XXX.² The total penalty amount for possession of XXX packs of unstamped little cigars is \$XXX. For XYZ Business, Inc., under section 18c, the penalty for the first XXX packs is \$XXX. Under section 18b, the penalty for the remaining XXX packs is \$XXX.³ The total penalty amount for possession of XXX packs of unstamped little cigars is \$XXX.

The owner of the businesses has asked that the penalties be reduced. He stated that no one informed him that that sale of unstamped little cigars was banned. (Tr. pp. 14, 23, 30) He also stated that he cannot pay the large penalties, and if he has to close his business, he and his family will be homeless. He said that if the penalties are reduced, he might be able to borrow money from some of his family members to pay them.

Unfortunately, these facts are not sufficient to establish reasonable cause for reducing or abating the penalties against the businesses. Retailers are responsible for selling tobacco products with the proper Illinois tax stamps on them. Nothing in the evidence indicates that the

¹ There is no penalty for the first 10 packs. The penalty for the remaining XX packs is \$XX each for a total penalty of \$XXX for the first XXXpacks.

² The penalty for the remaining XXX packs is \$XX each for a total of \$XXX.

³ The penalty for the remaining XXX packs is \$XX each for a total of \$XXX.

retailers took reasonable steps to make sure that there were no contraband little cigars on the premises of the businesses. These facts do not warrant reducing the penalties.

With respect to Mr. John Doe personally, the Tobacco Act prohibits only retailers and wholesalers from possessing unstamped packages of little cigars. See 35 ILCS 143/10-27(a); 10-28. The Department has not presented evidence that Mr. Ali individually acted as a retailer or wholesaler. The penalties, therefore, are not imposed on him personally.

Recommendation:

For the foregoing reasons, it is recommended that for ABC Business, Inc. d/b/a DEF Business, the XXX packs of little cigars that were seized by the Department on January 5, 2015 be confiscated and forfeited to the State of Illinois. In addition, it is recommended that a civil penalty of \$XXXX be assessed against ABC Business, Inc. d/b/a DEF Business.

It is further recommended that for XYZ Business, Inc., the XXX packs of little cigars that were seized by the Department on January 5, 2015 be confiscated and forfeited to the State of Illinois. It is also recommended that a civil penalty of \$XXXX be assessed against XYZ Business, Inc.

Linda Olivero
Administrative Law Judge

Enter: March 1, 2016